

REMARKS

The present amendment is submitted in response to the Office Action dated February 8, 2007, which set a three-month period for response. Filed herewith is a Request for a Three-month Extension of Time, making this amendment due by August 8, 2007.

Claims 4, 12, 13, 18, and 19 are pending in this application.

In the Office Action, the previous election requirement was made final and claims 14-17 were withdrawn from further consideration. Claims 1-13 were rejected under 35 U.S.C. 112, first paragraph, on grounds the specification does not reasonably provide enablement for natural zein alone in improving the condition of hair. Claim 4 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 1-13 were rejected under 35 U.S.C. 101 on grounds the claimed recitation of a use without setting forth any steps involved in the process results in an improper definition of a process. Claims 1-9 and 12 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,518,717 to Morawsky et al. Claims 1-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over Morawsky et al.

In the present amendment, claims 1-3 and 5-11 have been canceled. New independent method claim 18 has been added, and claims 12 and 13 were amended to depend from claim 18. In addition, new claim 19 was added, which also depends from claim 18.

Disclosure for the features of new claim 18 can be found in the specification as follows: “method for improving the condition of hair”, page 2, paragraph 3; “cosmetic hair-treatment agent”, page 2, paragraph 2; “natural zein, i.e., the unhydrolyzed protein obtained from corn”, page 2, paragraph 4; “0.01 to about 10.0 percent by weight of natural zein”, page 3, paragraph 9; “cosmetic carrier”, page 4, paragraph 6; “bringing the hair into contact with said agent”, page 3, paragraph 8; “for a time sufficient for hardening, strengthening, restructuring, repairing or stabilizing or for increasing the luster, volume or combability of hair”, page 3, paragraph 8; page 2, paragraph 3; and page 5, paragraph 3; “rinsing or washing said agent out with water or an aqueous agent”, page 3, paragraph 8 and page 5, paragraph 3; and “time sufficient for hardening, strengthening, restructuring, repairing or stabilizing or for increasing the luster, volume or combability of hair is from 1 to 60 minutes”, page 5, paragraph 3.

With regard to the rejection under Section 112, first paragraph, the content of a “cosmetic carrier” overcomes the objection with regard to “no reasonable enablement for natural zein alone” on page 3 of the Office Action. All examples contain water as a “cosmetic carrier”.

The Morawsky et al patent does not refer to “natural zein” but to natural based hydrolyzed zein (see column 1, lines 7-13, claim 1 and examples of Morawsky). The manner of preparing hydrolyzed zein can be derived from example 1 of Morawsky. In contrast, the present invention refers to natural zein, that is, the unhydrolyzed protein obtained from corn, as disclosed in the

specification on page 2, paragraph 4. The zein of Morawsky et al therefore is not a natural zein as defined in claim 18.

The term “chemical noxae” as used in the specification and claims of the present application refers to damaging chemical ingredients like keratin-reducing substances, oxidants, strong bases, oxidation dye precursors and direct or synthetic dyes (see specification, page 1, paragraph 3, and page 2, paragraph 6). “Physical noxae” refers to weathering, combing and brushing (see specification, page 1, paragraph 3).

Looking next at the rejection of the claims, both cited references teach the use of polypeptides prepared by a hydrolysis of proteins to condition hair. This was pointed out above with regard to Morawsky et al. New claim 19 clearly recites that “natural zein”, that is the unhydrolyzed protein obtained from corn, and not the polypeptide is intended.

Gumprecht et al clearly teaches that the material noted as “polypeptide” is produced by a hydrolysis reaction from a protein (see column 2, lines 20-34). Polypeptides can be produced by subjecting naturally occurring proteins to acid, base and/or enzymatic hydrolysis (see column 1, lines 62-64). The proteins which may be used in the preparation of charged polypeptides from trypsin-catalyzed hydrolysis cover a wide range (see column 4, lines 51-53. These proteins can be classified according to their biological function and include structural proteins such as collagen, keratin, fibroin, elastin, sclerotin, and the like; storage proteins such as ovalbumin, casein, ferritin, gliadin, zein, and the like; transport proteins such as serum albumin, hemoglobin, B₁ –lipoprotein,

ceruloplasmin, and the like; and contractile proteins such as myosin, actin, dynein, and the like, and mixtures thereof (see column 4, lines 53-61).

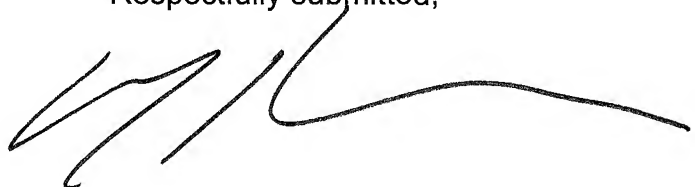
In column 4, line 57, zein is therefore clearly cited as an example of a protein which is useful **for producing** the polypeptide by an enzyme-catalyzed hydrolysis. As a consequence, the Gumprecht composition does not contain **natural zein**, but a **zein derivative**, namely, hydrolyzed zein (see column 2, lines 24-26).

Therefore, neither Morawsky nor Gumprecht teaches using natural zein in a composition or method for treating hair. With the definition of zein as “unhydrolyzed protein obtained from corn” in new claim 18, a clear distinction over the hydrolyzed zein of the prior art is provided.

The cited references provide the practitioner with absolutely no suggestion to replace the hydrolyzed zein with natural zein to achieve the present invention. Indeed, this modification would change the principle of operation disclosed in the cited art.

The application in its amended state is believed to be in condition for allowance. Action to this end is courteously solicited. Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of fluid, connected strokes that form a stylized representation of the signer's name.

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